

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD.

CIVIL REVISION APPLICATION No 1307 of 1998

For Approval and Signature :

Hon'ble MR. JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the Judgment ?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the Judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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RAVAL OKHABHAI ARJANBHAI  
VERSUS  
RAVAL NATHIBEN ARJANBHAI

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Appearance:

MR AKSHAY H MEHTA for the Petitioners  
MR RN SHAH for the Respondents

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CORAM : MR JUSTICE S.K. KESHOTE  
Date of Decision : 04/04/2000

C.A.V. JUDGMENT

1. Rule. Mr. R.N. Shah waives service of rule on behalf of the respondents.

2. The plaintiffs- respondents filed a suit for possession of the suit property against the defendants-petitioners. In the suit, an application has been filed for grant of interim relief to the effect that pending the final disposal of the suit, the defendants-petitioners be directed to hand over the vacant and peaceful possession of the suit property to the plaintiffs-respondents and further to restrain the defendants-petitioners from interfering with the possession of the plaintiffs- respondents of the suit premises. The trial court has rejected this application Ex. 5 of the plaintiffs - respondents. On appeal, the first appellate court has allowed the appeal and passed mandatory injunction as prayed for by the plaintiffs respondents in para -8 of Ex. 5 meaning thereby, a direction has been given for handing over the possession of the suit property to the plaintiffs - respondents. Hence, this revision application under section 115, C.P.C..

3. On 21st September, 1998, the revision application had come up for preliminary hearing in the court, on which date, notice was issued to the respondents returnable on 5th November, 1998 and by way of interim relief, status-quo as it exists on that date was ordered to be maintained. This interim relief which has been granted by this court is continuing till this date. The suit out of which this revision application has arisen is of the year 1994.

4. Learned counsel for the petitioners contended that both the courts below have found the defendants petitioners to be in possession of the suit property. Even if it is taken that the plaintiffs - respondents are the owners of the property but in the suit for possession filed by the plaintiffs- respondents, in the facts of this case, no mandatory injunction could have been granted. Granting of mandatory injunction by way of interlocutory order results in granting of final relief at the interlocutory stage. Relying on some of the decisions of the Hon'ble Supreme Court, Shri Akshay H Mehta contended that time and again, the Apex Court has deprecated this practice of the courts of granting final relief at the interlocutory stage in the matters. Lastly, it is contended that the learned first appellate court has committed a serious material irregularity in exercise of its jurisdiction in passing of the impugned order.

5. Shri R.N. Shah, on the other hand, supported

the order passed by the first appellate court.

6. Having given my thoughtful consideration to the submissions made by the learned counsel for the parties, I am in agreement with the contentions raised by the learned counsel for the petitioners that in the facts of this case the learned first appellate court has committed a material irregularity in exercise of its jurisdiction in passing of the impugned order. Both the courts have concurrently held that the defendants petitioners are in possession of the suit property. It is true that both the courts below have concurrently held that the plaintiffs - respondents are the owners of the property but in the matter of grant of temporary injunction, at this stage, more important is the possession. Learned first appellate court has lost the sight of the fact that the plaintiffs- respondents filed the suit for possession of the suit property and in case by way of interim relief, this mandatory injunction is granted thereby a direction has been given to the respondents to hand over the possession to them then what remains in the suit itself. It is certainly a case where the learned first appellate court has granted final relief in the suit at the stage of consideration of application Ex.5. Once the defendants- petitioners were accepted to be in possession then no such injunction could have been granted. At the most, the appellate court could have given priority in hearing to the suit but not to give a direction virtually passing the decree for possession as prayed for in the suit at this interlocutory stage. At this stage, one party is claiming the right and other party is contesting the same. It is difficult to say ultimately in whose favour the court will decide the matter. There may be all possibility that finally the court may decide the matter in favour of the defendants- petitioner. In such matter, during the pendency of the suit, at the most, status-quo could have been ordered and not the mandatory injunction.

7. The order of the learned first appellate court in the facts of this case, cannot be allowed to stand and accordingly, this revision application succeeds and the same is allowed and the order of the Extra Assistant Judge, Surendranagar, dated 9-7-1998 passed in Civil Misc. Appeal No. 90 of 1995 is quashed and set aside. The suit is of the year 1994 and the learned trial court is directed to dispose of the same finally within a period of 18 months from the date of receipt of writ of this order or certified copy thereof, whichever is earlier. Rule is made absolute accordingly. In the

facts of this case, no order as to costs.

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